

1 Michele R. Stafford, Esq. (SBN 172509)
2 Blake E. Williams, Esq. (SBN 233158)
3 SALTZMAN & JOHNSON LAW CORPORATION
4 44 Montgomery Street, Suite 2110
5 San Francisco, CA 94104
6 (415) 882-7900
7 (415) 882-9287 – Facsimile
8 mstafford@sjlawcorp.com
9 bwilliams@sjlawcorp.com
10 Attorneys for Plaintiffs

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 NORTHERN CALIFORNIA GLAZIERS,
12 ARCHITECTURAL METAL AND GLASS
13 WORKERS PENSION PLAN, et al.

Case No.: C11-4926 LB

**NOTICE OF ACKNOWLEDGMENT
AND JUDGMENT PURSUANT TO
STIPULATION**

Plaintiffs,

v.

15 HAYWARD GLASS COMPANY, INC., a
16 California Corporation, and DAVID BRIAN
17 TAUSHECK, an individual, and MARY
18 TAUSHECK, an individual,

Defendants.

IT IS HEREBY STIPULATED and AGREED (the “Stipulation”) by and between the parties hereto, that Judgment shall be entered in the within action in favor of the Plaintiffs NORTHERN CALIFORNIA GLAZIERS, ARCHITECTURAL METAL AND GLASS WORKERS PENSION PLAN, et al. (collectively “Plaintiffs” or “Trust Funds”) and against Defendants HAYWARD GLASS COMPANY, INC., a California Corporation, and DAVID BRIAN TAUSHECK, an Individual, and/or alter egos and/or successor entities (collectively “Defendants”), as follows:

1. Defendants entered into a valid Collective Bargaining Agreement with the Northern California Glaziers Master Agreement (“Bargaining Agreement”) between District

1 Council 16 and the Northern California Glass Management Association (hereinafter "Bargaining
2 Agreement"). This Bargaining Agreement has continued in full force and effect to the present
3 time.

4 2. David Brian Tausheck, as an individual Defendant, and in his capacity as
5 RMO/CEO/President of Defendant Hayward Glass Company, Inc., hereby acknowledges that he
6 is authorized to receive service and has received the following documents in this action:
7 Summons; Complaint; Dispute Resolution Procedures in the Northern District of California; Order
8 Setting Initial Case Management Conference and ADR Deadlines; Standing Order for United
9 States Magistrate Judge Laurel Beeler; Standing Order for All Judges of the Northern District of
10 California; Instructions for Completion of ADR Forms Regarding Selection of an ADR Process;
11 Stipulation and [Proposed Order] Selecting ADR Process; Notice of Need for ADR Phone
12 Conference; ADR Certification by Parties and Counsel; Notice of Assignment to a Magistrate
13 Judge, Consent, Declination; ECF Registration Information Handout; Welcome to the Oakland
14 Divisional Office of the United States District Court; and Certification of Interested Entities or
15 Persons Pursuant to Civil Local Rule 3-16.

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

1 3. Defendants have become indebted to the Trust Funds as follows:

2	7/11	Contributions	\$23,803.34	
3		20% Liquidated Damages	\$4,760.67	
4		5% p/a Interest (9/1/11-10/13/11)	\$140.21	
5				\$28,704.22
6	8/11	Contributions	\$25,086.18	
7		20% Liquidated Damages	\$5,017.24	
8		5% p/a Interest (10/1/11-10/13/11)	\$44.67	
9				\$30,148.09
10	9/11	Contributions	\$19,199.09	
11		20% Liquidated Damages	\$3,839.82	
12				\$23,038.91
13	Audit (1/1/08-1/31/11)			
14		Contribution Underpayments	\$6,320.99	
15		Interest (through 6/30/11)	\$434.62	
16		5% p/a Interest (7/1/11-10/13/11)	\$90.92	
17		20% Liquidated damages *	\$1,264.20	
18		Improper Payments (Credit)	<u>\$167.37</u>	
19				\$7,943.36
20	Attorney's Fees (8/11/11-10/11/11)			
21				\$2,662.00
22	Cost of Suit			
23				\$350.00
24	TOTAL			
25				\$92,846.58

14 * Liquidated damages in the audit are shown as \$750.00. However, per the provisions of
 15 the Trust Agreements, liquidated damages increase to 20% upon the commencement of
 16 litigation.

17 4. Defendants shall *conditionally* pay the amount of **\$77,964.65**, representing all of
 18 the above amounts, less liquidated damages in the amount of **\$14,881.93**. *This conditional waiver*
 19 *is expressly conditioned upon Trustee approval following timely compliance with all of the terms*
 20 *of this Stipulation*, as follows:

21 (a) Beginning on **November 15, 2011**, and on or before the 15th day of each
 22 month thereafter for a period of twelve (12) months through and including October 15, 2012,
 23 Defendants shall pay to Plaintiffs the amount of **\$6,800.00** per month.

24 (b) Payments may be made by joint check, to be endorsed to Plaintiffs prior to
 25 submission. Defendants shall have the right to increase the monthly payments at any time and
 26 there is no penalty for prepayment.

27 (c) Payments shall be applied first to unpaid interest and then to unpaid
 28 principal. The unpaid principal balance shall bear interest from October 14, 2011, at the rate of 5%

1 per annum in accordance with the Collective Bargaining Agreement and Plaintiffs' Trust
2 Agreements.

3 (d) Checks shall be made payable to the *District Council 16 Health & Welfare*
4 *Trust Fund*, and delivered on or before each due date to Blake E. Williams at Saltzman & Johnson
5 Law Corporation, 44 Montgomery Street, Suite 2110, San Francisco, California 94104, or to such
6 other address as may be specified by Plaintiffs.

7 (e) At the time that Defendants make their 11th payment, Defendants may
8 submit a written request for waiver of liquidated damages directed to the Board of Trustees, but
9 sent to Saltzman and Johnson Law Corporation with their 11th payment. Defendants will be
10 advised as to whether or not the waiver has been granted prior to the final payment hereunder.
11 Such waiver will not be considered until and unless all other amounts are paid in full and
12 Defendants' account is current.

13 (f) Prior to the last payment pursuant to this Stipulation, Plaintiffs shall advise
14 Defendants, in writing, as to the final amount due, including interest and all additional attorneys'
15 fees and costs incurred by Plaintiffs in connection with collection and allocation of the amounts
16 owed to Plaintiffs under this Stipulation. Defendants shall pay all additional attorneys' fees and
17 costs regardless of whether or not Defendants default herein. Any additional amounts due
18 pursuant to the provisions hereunder shall also be paid in full with the October 15, 2012 stipulated
19 payment.

20 (g) Failure to comply with any of the above terms shall constitute a default of
21 the obligations under this Agreement and the provisions of ¶11 shall apply.

22 5. In the event that any check is not timely submitted or fails to clear the bank, or is
23 unable to be negotiated for any reason for which Defendants are responsible, Defendants shall be
24 considered to be in default of the Judgment entered. If this occurs, Plaintiffs shall make a written
25 demand to Defendants to cure said default *within seven (7) days of the date of the notice from*
26 *Plaintiffs*. If caused by a failed check, default will only be cured by the issuance of a replacement
27 *cashier's check*, delivered to Saltzman and Johnson Law Corporation within the seven (7) day

1 cure period. If Defendants elect to cure said default, and Plaintiffs elect to accept future payments,
 2 *all such future payments shall be made by cashier's check* at Plaintiffs' request. In the event
 3 default is not cured, all amounts remaining due hereunder shall be due and payable on demand by
 4 Plaintiffs.

5 6. Beginning with contributions due for hours worked by Defendants' employees
 6 during the month of October 2011, due on November 15, 2011 and delinquent if not received by
 7 the Trust Funds before the last business day of the month, and for every month thereafter until this
 8 Judgment is satisfied, **Defendants shall remain current in contributions** due to Plaintiffs under
 9 the current Collective Bargaining Agreement and under all subsequent Collective Bargaining
 10 Agreements, if any, and the Declarations of Trust as amended. Defendants shall fax a copy of its
 11 contribution report for each month, together with a copy of that payment check, *to Blake E.*
 12 *Williams at 415-882-9287*, prior to sending the payment to the Trust Fund office.

13 Failure to comply with these terms shall also constitute a default of the obligations under
 14 this Agreement and the provisions of ¶ 11 shall apply.

15 7. Defendants shall make full disclosure of all jobs on which they are working by
 16 providing Plaintiffs with an ongoing and updated list of jobs including, but not limited to, the
 17 name and address of the job, the start and completion dates, the identity of General
 18 Contractor/Owner/Developer, and by providing certified payroll if it is a public works job. To the
 19 extent that Defendant is working on a Public Works job, or any other job for which Certified
 20 Payroll Reports are required, copies of said Reports *will be faxed to Blake E. Williams*
 21 concurrently with its submission to the General Contractor, Owner or other reporting agency.

22 These requirements are concurrent with, and in addition to, the requirements set forth
 23 above. Defendants shall fax said updated list each month (or sooner if required elsewhere herein)
 24 together with the contribution report (as required by ¶6 of this Stipulation) *to Blake E. Williams at*
 25 *415-882-9287*, on before the 15th day of each month. Attached hereto as *Exhibit A* is a Job Report
 26 Form which is to be completed each month.

27 \\\

28

1 8. Failure to comply with any of the above terms shall constitute a default of the
 2 obligations under this Agreement and the provisions of ¶11 shall apply. Any unpaid or late paid
 3 contributions, together with 20% liquidated damages and 5% per annum interest accrued on the
 4 contributions, pursuant to the Trust Agreements, shall be added to and become a part of this
 5 Judgment and subject to the terms herein. Plaintiffs reserve all rights available under the
 6 applicable Bargaining Agreement and Declarations of Trust of the Trust Funds for collection of
 7 current and future contributions, and for any additional past contributions not included herein as
 8 may be determined by Plaintiffs, pursuant to employee timecards or paystubs, by audit, or other
 9 means, and the provisions of this agreement are in addition thereto. Defendants specifically waive
 10 the defense of the doctrine *res judicata* as to any such additional amounts determined as due.

11 9. DAVID BRIAN TAUSHECK acknowledges that he is the RMO/CEO/President
 12 and a principal shareholder of HAYWARD GLASS COMPANY, INC., and that he specifically
 13 consents to the Court's jurisdiction as well as the use of a Magistrate Judge for all proceedings
 14 herein. Mr. Tausheck (hereinafter "Guarantor") also confirms that he is personally guaranteeing
 15 the amounts due pursuant to the terms of this Stipulation and further acknowledges that all
 16 affiliates, related entities and successors in interest to HAYWARD GLASS COMPANY, INC.
 17 and/or any subsequent entity wherein Mr. Tausheck is a principal, officer, owner, or possesses any
 18 ownership interest shall also be bound by the terms of this Stipulation as Guarantors, and also
 19 consents to this Court's jurisdiction as well as the use of a Magistrate Judge. All such entities
 20 shall specifically consent to the terms herein and to the Court's jurisdiction, in writing at the time
 21 of any assignment, affiliation or purchase.

22 10. Prior to the last payment pursuant to this Judgment Pursuant to Stipulation,
 23 Plaintiffs shall advise Defendants/Guarantor, in writing, as to the final lump sum amount due,
 24 including interest and all additional attorneys' fees and costs incurred by Plaintiffs in connection
 25 with collection and allocation of the amounts owed to Plaintiffs under this Stipulation as set forth
 26 above. Any additional amounts due pursuant to the provisions hereunder shall also be paid in full
 27 with the October 15, 2012 stipulated payment.

1 11. In the event that Defendants/Guarantor fail to make any payment required under ¶4
2 above, or otherwise default on their obligations as detailed in this Stipulation, and such default is
3 not timely cured, the following will occur:

4 (a) The entire balance of **\$92,846.58**, as specified in ¶3, plus interest, but
5 reduced by principal payments received from Defendants/Guarantor, in addition to any unpaid
6 contributions then due plus 20% liquidated damages and 5% per annum interest on the unpaid or
7 late paid contributions, shall be immediately due and payable, together with any attorneys' fees
8 and costs incurred during the term of this Stipulation;

9 (b) A Writ of Execution may be obtained against Defendants/Guarantor without
10 further notice to Defendants/Guarantor, in the amount of the unpaid balance plus any additional
11 amounts due under the terms herein. Such Writ of Execution may be obtained solely upon
12 declaration by a duly authorized representative of the Plaintiffs setting forth any payment
13 theretofore made by or on behalf of Defendants/Guarantor and the balance due and owing as of the
14 date of default.

15 (c) Defendants/Guarantor waive any notice of Entry of Judgment or of any
16 Request for a Writ of Execution upon default, and expressly waive all rights to stay of execution
17 and appeal. The declaration or affidavit of a duly authorized representative of Plaintiffs as to the
18 balance due and owing as of the date of default shall be sufficient to secure the issuance of a Writ
19 of Execution, without notice to Defendants/Guarantor.

20 (d) Defendants/Guarantor shall pay all additional attorneys' fees and costs
21 incurred by Plaintiffs in connection with collection and allocation of the amounts owed by
22 Defendants/Guarantor to Plaintiffs under this Stipulation, whether or not a default occurs herein.

23 12. Any failure on the part of the Plaintiffs to take any action against
24 Defendants/Guarantor as provided herein in the event of any breach of the provisions of this
25 Stipulation shall not be deemed a waiver of any subsequent breach by the Defendants/Guarantor of
26 any provisions herein.

27 13. In the event of the filing of a bankruptcy petition by Defendants/Guarantor, the
28

1 parties agree that any payments made pursuant to the terms of this Judgment, shall be deemed to
2 have been made in the ordinary course of business as provided under 11 U.S.C. Section 547(c)(2)
3 and shall not be claimed by Defendants/Guarantor as a preference under 11 U.S.C. Section 547 or
4 otherwise. Defendants/Guarantor nevertheless represent that no bankruptcy filing is anticipated.

5 14. Should any provision of this Stipulation be declared or determined by any court of
6 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and
7 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said
8 illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this
9 Stipulation.

10 15. This Stipulation is limited to the agreement between the parties with respect to the
11 delinquent contributions and related sums enumerated herein, owed by Defendants/Guarantor to
12 the Plaintiffs. This Stipulation does not in any manner relate to withdrawal liability claims, if any.
13 Defendants/Guarantor acknowledge that the Plaintiffs expressly reserve their right to pursue
14 withdrawal liability claims, if any, against Defendants/Guarantor and all of their control group
15 members, as provided by the Plaintiffs' Plan Documents, Trust Agreements incorporated into their
16 Collective Bargaining Agreement, and applicable laws and regulations.

17 16. This Stipulation contains all of the terms agreed by the parties and no other
18 agreements have been made. Any changes to this Stipulation shall be effective only if made in
19 writing and signed by all parties hereto.

20 17. This Stipulation may be executed in any number of counterparts and by facsimile,
21 each of which shall be deemed an original and all of which shall constitute the same instrument.

22 18. Defendants/Guarantor represent and warrant that they have had the opportunity to
23 be or have been represented by counsel of their own choosing in connection with entering this
24 Stipulation under the terms and conditions set forth herein, that they have read this Agreement
25 with care and is fully aware of and represent that they enter into this Stipulation voluntarily and
26 without duress.

27 ///

28

1 19. The parties agree that the Court shall retain jurisdiction of this matter until this
2 Judgment is satisfied. Upon execution of this Stipulation by the parties identified below, Plaintiffs
3 stipulate and agree that they will immediately file a voluntary dismissal without prejudice of
4 Defendant Mary Tausheck individually from the above entitled matter.

5 || Dated: October 14, 2011

HAYWARD GLASS COMPANY, INC.

By: /S/David Brian Tausheck
David Brian Tausheck
RMO/CEO/President

Dated: October 14, 2011

DAVID BRIAN TAUSHECK

/S/David Brian Tausheck
Individually, as Personal Guarantor

Dated: October 14, 2011

DAVID BRIAN TAUSHECK

Dated: October 17, 2011

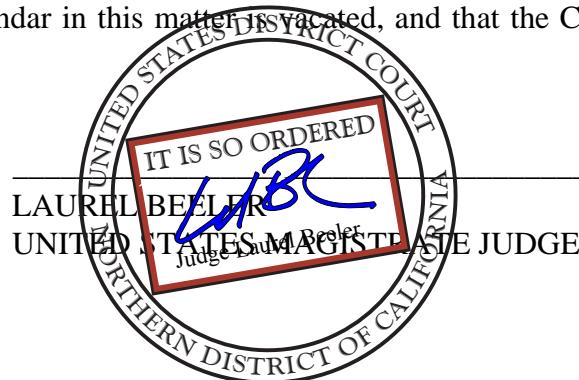
SALTZMAN AND JOHNSON LAW CORPORATION

By: /S/Blake E. Williams
Blake E. Williams
Attorneys for Plaintiffs

19 IT IS SO ORDERED.

20 IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall
1 retain jurisdiction over this matter.

22 Dated: October 28, 2011



1
2 **EXHIBIT A**
3

4 **JUDGMENT PURSUANT TO STIPULATION**
5

6 **JOB REPORT FORM**
7

8 *** Updated report must be faxed to Blake E. Williams, Esq., at (415) 882-9287
9 on the 15th day of each month ***
10

11 Employer Name: **HAYWARD GLASS COMPANY, INC.**
12

13 Report for the month of _____ Submitted by: _____
14

Project Name:		
Project Address:		
General Contractor:		
General Contractor Address/Tel. #:		
Contract #:	Date of Contract:	
Total Value of Contract:		
Work Start Date:	Work Completion Date:	

Project Name:		
Project Address:		
General Contractor:		
General Contractor Address/Tel. #:		
Contract #:	Date of Contract:	
Total Value of Contract:		
Work Start Date:	Work Completion Date:	

Project Name:		
Project Address:		
General Contractor:		
General Contractor Address/Tel. #:		
Contract #:	Date of Contract:	
Total Value of Contract:		
Work Start Date:	Work Completion Date:	

26
27 *** *Attach additional sheets as necessary* ***
28